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M E M O R A N D U M

TO: Kevin Fox, Legislative Chairman
FROM: Michael Rosen *MR*
RE: Proposed Tax Department Indian Regulations
DATE: January 26, 1995

The following is a summary I received from the Department of Taxation and Finance regarding the proposed regulation issued by former Commissioner Wetzler in light of the victory in the U.S. Supreme Court decision Department of Taxation and Finance v Milhelm Attea & Bros.

The proposal amends the Department's existing regulations regarding the sale of untaxed cigarettes and motor fuel by modifying the requirements that Indian nations or tribes, nation or tribal businesses, Indian consumers and registered reservation dealers must meet in order to purchase and/or sell product exempt from excise taxes. These amendments will:

- simplify the registration requirements for reservation dealers;
- make the recordkeeping requirements uniform for reservations dealers and nation or tribal businesses by requiring the use of log books to record tax exempt sales;
- provide for a tax exemption coupon system which -- in the absence of an agreement with an Indian nation or tribe to regulate, license or control the sale and distribution of untaxed cigarettes and motor fuel within its reservation -- the Department may utilize to limit the quantity of

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untaxed product that can be sold by suppliers on Indian reservations; and

- provide guidance regarding certain enforcement issues and make various technical and conforming amendments.

Written comments concerning the proposal may be submitted, on or before February 11, 1995, to Marilyn M. Kaltenborn, Director of the Taxpayer Services Division, Department of Taxation and Finance, Building 9, Room 104, W.A. Harriman Campus, Albany, New York 12227.

The proposal is generally good for us and we should organize a campaign to have written comments mailed to the Department prior to the February 11, 1995 date.

The one issue we will have to guard against is that the regulations allow the Department to enter into an agreement with an exempt nation or tribe whereby the nation or tribe would regulate sales of untaxed products. We will have to insure that these agreements allow only reasonable levels of untaxed products to be sold.

Even with this exception, I believe the proposal is good for us and recommend we push for adoption.

Please advise.

cc: Mark Sidebottom, Chairman